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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 26th November, 1992:—

I

BILL No. LXVIII OF 1992

A Bill further to amend the Indian Medical Council Act, 1956

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Medical Council (Amendment) Act, 1992.

Short title and commencement.

(2) It shall be deemed to have come into force on the 27th day of August, 1992.

Insertion of new sections 10A, 10B and 10C.

102 of 1956.

2. After section 10 of the Indian Medical Council Act, 1956 (hereinafter referred to as the principal Act), the following sections shall be inserted, namely:—

Permission for establishment of new medical college, new course of study, etc.

‘10A. (1) Notwithstanding anything contained in this Act or any other law for the time being in force,—

(a) no person shall establish a medical college; or

(b) no medical college shall—

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which

would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, person includes any University or a trust but does not include the Central Government.

Explanation 2.—For the purposes of this section, “admission capacity”, in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendation.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may,—

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or colleges concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (1).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (1), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have granted.

(6) In computing the time limit specified in sub-section (5), the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:—

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be, under section 20 in the case of postgraduate medical education;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.

Non-recognition of medical qualifications in certain cases.

10B. (1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Explanation.—For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

Time for seeking permission for certain existing medical colleges, etc.

10C. (1) if, after the 1st day of June, 1992 and on and before the commencement of the Indian Medical Council (Amendment) Act, 1992 any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity, such person or medical college, as the case may be, shall seek, within a period of one year from the commencement of the Indian Medical Council (Amendment) Act, 1992, the permission of the Central Government in accordance with the provisions of section 10A.

(2) If any person or medical college, as the case may be, fails to seek the permission under sub-section (1), the provisions of section 10B shall apply, so far as may be, as if permission of the Central Government under section 10A has been refused".

Amendment of section 33.

3. In section 33 of the principal Act, after clause (f), the following clauses shall be inserted, namely:—

"(fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of section 10A;

(fb) any other factors under clause (g) of sub-section (7) of section 10A;

(fc) the criteria for identifying a student who has been granted a medical qualification referred to in *Explanation* to sub-section (3) of section 10B.”.

Ord. 13
of 1992.

4. (1) The Indian Medical Council (Amendment) Ordinance, 1992 is hereby repealed.

Repeal
and
saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Indian Medical Council Act, 1956 was enacted for the purpose of reconstituting the Medical Council of India and the maintenance of the Medical Register for India and for matters connected therewith.

2. The experience of the working of the 1956-Act had brought to light certain inadequacies. The Central Government had introduced a comprehensive Bill to amend the 1956-Act in Rajya Sabha on the 26th August, 1987. The Bill was referred to a Joint Select Committee in December, 1987 and the Joint Committee submitted its report in 1989 recommending further amendments to the Bill. The matter could not be processed further due to dissolution of the Lok Sabha and change in Government. However, by early 1992 it became necessary to reconsider some of the recommendations contained in the Joint Committee's Report keeping in view the current requirements of medical education. While the matter was in an advanced stage of consideration, the Supreme Court of India in their judgment in *Mohin Jain V. Government of Karnataka* on 30th July, 1992, held that educational institutions cannot charge capitation fee and that education, including higher education, is a Fundamental Right. A number of private institutions have challenged the above mentioned judgment and sought a review by the Constitution Bench of the Supreme Court. In the circumstances, Government has, therefore, considered it advisable not to proceed with the 1987-Bill as many of the matters covered by the Bill will become subject of review by the Supreme Court.

3. Meanwhile, it had been noticed that some State Governments were giving approval for the opening of new medical colleges on their own, without insisting on the provision of basic prerequisites of hospital, equipment, laboratories or qualified faculty members, etc. In certain cases, after the colleges gave admission to students they began exercising combined pressure on the management for grant of approval to the medical colleges by the Medical Council of India.

4. In order to curb such mushroom growth of medical colleges, the President promulgated an Ordinance on the 27th August, 1992 to amend the Indian Medical Council Act, 1956 by incorporating therein provisions for prior permission of the Central Government for establishing any new medical college and for starting any new or higher course of study in an existing medical college or increasing admission capacity in any course of study or training including, post-graduate course of study.

5. The Bill seeks to replace the aforesaid Ordinance.

M. L. FOTEDAR.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend section 33 of the Indian Medical Council Act, 1956 to empower the Medical Council of India to frame regulations for prescribing the form of the scheme, the particulars to be given in such scheme and the manner in which the scheme shall be submitted to the Government and also the fees which should accompany the said schemes, etc. It also empowers the Medical Council of India to prescribe the factors to be taken into consideration while approving or disapproving a scheme.

2. It further empowers the Medical Council of India to frame regulations to prescribe the criteria for identifying a student who has been granted the medical qualification on the basis of increase in the admission capacity in any course of study or training which has been opened without the previous permission of the Central Government.
3. The matters in respect of which the regulations may be made pertain to matters of detail and procedure. The delegation of legislative power is, therefore, normal in character.

II

BILL No. LXIX OF 1992

A Bill further to amend the Dentists Act, 1948

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

Short title and commencement.

Insertion of new sections 10A, 10B and 10C.

Permis-
sion for
estab-
lish-
ment of
new
dental
college,
new
courses
of study,
etc.

1. (1) This Act may be called the Dentists (Amendment) Act, 1992.

(2) It shall be deemed to have come into force on the 27th day of August, 1992.

2. After section 10 of the Dentists Act, 1948 (hereinafter referred to as the principal Act), the following sections shall be inserted, namely:—

16 of 1948.

‘10A. (1) Notwithstanding anything contained in this Act or any other law for the time being in force,—

(a) no person shall establish an authority or institution for a course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the grant of recognised dental qualification; or

(b) no authority or institution conducting a course of study or training (including a post-graduate course of study or training) for grant of recognised dental qualification shall—

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised dental qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, “person” includes any University or a trust but does not include the Central Government.

Explanation 2.—For the purposes of this section, “admission capacity”, in relation to any course of study or training (including a post-graduate course of study or training) in an authority or institution granting recognised dental qualification, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person, authority or institution granting recognised dental qualification shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the said scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person, authority or institution concerned, granting recognised dental qualification and thereafter, it may,—

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person, authority or institution concerned for making a written representation and it shall be open to such person, authority or institution to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person, authority or institution concerned, and having regard to

the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person, authority or institution concerned granting recognised dental qualification a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person, authority or institution whose scheme has not been approved to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (1).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (1), no order passed by the Central Government has been communicated to the person, authority or institution submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person, authority or institution concerned submitting the scheme in furnishing any particulars called for by the Council or by the Central Government, shall be excluded.

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:—

(a) whether the proposed authority or institution for grant of recognised dental qualification or the existing authority or institution seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of dental education in conformity with the requirements referred to in section 16A and the regulations made under sub-section (1) of section 20;

(b) whether the person seeking to establish an authority or institution or the existing authority or institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the authority or institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such authority or institution or course of study or training or as a result of the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such authority or institution or course of study or training by persons having the recognised dental qualifications;

(f) the requirement of manpower in the field of practice of dentistry; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person, authority or institution concerned.

10B. (1) Where any authority or institution is established for grant of recognised dental qualification except with the previous permission of the Central Government in accordance with the provisions of section 10A, no dental qualification granted to any student of such authority or institution shall be a recognised dental qualification for the purposes of this Act.

(2) Where any authority or institution granting recognised dental qualification opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no dental qualification granted to any student of such authority or institution on the basis of such study or training shall be a recognised dental qualification for the purposes of this Act.

(3) Where any authority or institution granting recognised dental qualification increases its admission capacity in any course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no dental qualification granted to any student of such authority or institution on the basis of the increase in its admission capacity shall be a recognised dental qualification for the purposes of this Act.

Explanation.—For the purposes of this section, the criteria for identifying a student who has been granted a dental qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

10C. (1) If, after the 1st day of June, 1992 and on and before the commencement of the Dentists (Amendment) Act, 1992 any person has established an authority or institution for grant of recognised dental qualification or any authority or institution granting recognised dental qualification has opened a new or higher course of study or training (including a post-graduate course of study or training) or increased its admission capacity, such person, authority or institution, as the case may be, shall seek, within a period of one year from the commencement of the Dentists (Amendment) Act, 1992, the permission of the Central Government in accordance with the provisions of section 10A.

(2) If any person or, as the case may be, any authority or institution granting recognised dental qualification fails to seek the permission under sub-section (1), the provisions of section 10B shall apply, so far as may be, as if permission of the Central Government under section 10A has been refused.

Non re-
cognition
of dental
qualifi-
cations in
certain
cases.

Time for
seeking
permis-
sion for
certain
existing
authori-
ties.

Amend-
ment of
section
20.

3. In section 20 of the principal Act, in sub-section (2), after clause (f), the following clauses shall be inserted, namely:—

“(fa) prescribe the form of the scheme the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of section 10A;

(fb) prescribe any other factors under clause (g) of sub-section (7) of section 10A;

(fc) prescribe the criteria for identifying a student who has been granted a dental qualification referred to in Explanation to sub-section (3) of section 10B.”.

Repeal
and
sav.ng.

4. (1) The Dentists (Amendment) Ordinance, 1992 is hereby repealed.

Ord. 14
of 1992.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Dentists Act, 1948 was enacted with the object of regulating the profession of dentistry and for that purpose to constitute Dental Councils.

2. The experience of the working of the Act has brought to light certain inadequacies. One of the most noticeable inadequacies has been the mushrooming of dental colleges without adequate academic and training facilities as laid down in the regulations of the Dental Council of India. At present, the law does not require anyone to seek the prior permission of the Dental Council of India before establishing a new dental college or for adding a new course of study or post-graduate course or for increasing the capacity of students in any existing college. Taking advantage of these legal lacunae dental colleges were being established after obtaining the permission of the State Government and affiliation from the University concerned. After the students had put in two or three years of study, such colleges were approaching the Dental Council of India for recognition. The Dental Council of India is not in a position to stop the functioning of such colleges at that stage as such a step would invariably harm the future prospects of the students and result in allegations of victimisation.

3. The Dental Council of India has been examining modifications in the Act to enable the Council to discharge its duties more effectively and exercise better control on the maintenance of standards at the instance of the Central Government. In the meantime, instances of private colleges being permitted to start dental courses by State Governments without making provision for the requisite infrastructural facilities, necessitated urgent action to be taken to check further proliferation. The President, therefore, promulgated the Dentists (Amendment) Ordinance 1992 (Ord 14 of 1992) on the 27th August, 1992 to amend the Dentists Act by incorporating therein provisions for prior permission of the Central Government for establishing any new dental college and for starting any new or higher course of study or training or increase in the admission capacity in any existing college. Any person desirous of starting a new dental college, etc., will be required to apply to the Central Government in the form prescribed by the Dental Council of India.

4. The Bill seeks to replace the aforesaid Ordinance.

M. L. FOTEDAR.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend section 20 of the Dentists Act, 1948 to empower the Dental Council of India to frame regulations for prescribing the form and the manner in which schemes shall be submitted to the Central Government and also the fees which should accompany such a scheme. It also empowers the Dental Council to prescribe the factors to be taken into consideration while approving or disapproving a scheme.

It further empowers the Dental Council to prescribe regulations for identifying the students who have been granted a dental qualification on the basis of increase in the admission capacity in terms of sub-section (3) of section 10B.

The matters in respect of which the regulations may be made pertain to matters of detail and procedure. The delegation of legislative power is, therefore, normal in character.

Memorandum explaining the modification contained in the Bill to replace the Dentists (Amendment) Ordinance, 1992

The Dentists (Amendment) Bill, 1992 proposes to make the following modification in the provisions contained in the said Ordinance:—

In clause 3, in the direction portion, the reference to section 55 of the Dentists Act, 1948 is proposed to be modified as a reference to section 20 of the said Act. The said modification is due to the fact that the power to frame regulations under sections 10A and 10B should vest with the Dental Council of India under section 20 and not under section 55 of the principal Act which deals with the power to frame rules by State Government. The modification is in consonance with the spirit of the Ordinance where the power to frame regulations is to be given to the Dental Council of India. The modification is to set right this mistake which had crept in the Ordinance.

SUDARSHAN AGARWAL,
Secretary-General.

